

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

TONY FRENCH,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, ET AL.,

Defendants.

No. 2:15-cv-01521-CL

OPINION AND ORDER

MOSMAN, J.,

On December 11, 2015, Magistrate Judge Clarke issued his Findings and Recommendation [8], recommending that Plaintiff's Amended Complaint [7] should be DISMISSED with prejudice for failure to state a claim. Plaintiff objected [10], and shortly thereafter, filed an appeal with the Ninth Circuit [11]. Citing its lack of jurisdiction, the Ninth Circuit failed to consider the appeal and sent the case back to this Court for consideration [12].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court

is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon careful review, I agree with Judge Clarke's recommendation and I ADOPT the F&R [8] as my own opinion.

IT IS SO ORDERED.

DATED this 19 day of September, 2016.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge